

**MINUTES OF
FAIRFAX COUNTY PLANNING COMMISSION
WEDNESDAY, MAY 16, 2001**

PRESENT: Walter L. Alcorn, Commissioner At-Large
John R. Byers, Mount Vernon District
Joan M. DuBois, Dranesville District
Janet R. Hall, Mason District
Suzanne F. Harsel, Braddock District
Ronald W. Koch, Sully District
Ilryong Moon, Commissioner At Large
Peter F. Murphy, Jr., Springfield District
John M. Palatiello, Hunter Mill District
Linda Q. Smyth, Providence District
Laurie Frost Wilson, Commissioner At-Large

ABSENT: John B. Kelso, Lee District

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The meeting was called to order at 8:20 p.m. by Chairman Peter F. Murphy, Jr.

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COMMISSION MATTERS

In the absence of Committee Chairman Kelso, Commissioner Hall reminded the Commission that there would be a meeting of the School Facilities Committee on Wednesday, May 23, 2001 at 7:30 p.m.

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FSA-M00-32-1 - NEXTEL COMMUNICATIONS, 3100 S. Manchester Street

Commissioner Hall RECOMMENDED THAT THE PLANNING COMMISSION CONCUR WITH THE DETERMINATION THAT THE MODIFICATIONS PROPOSED BY NEXTEL FOR FSA-M00-32-1, FOR THE TELECOMMUNICATIONS FACILITY LOCATED AT 3100 SOUTH MANCHESTER STREET, ARE IN CONFORMANCE WITH THE RECOMMENDATIONS OF THE COMPREHENSIVE PLAN AND CONSISTENT WITH PRIOR APPROVAL GRANTED BY THE PLANNING COMMISSION UNDER FS-M00-32 ON APRIL 26, 2000. THEREFORE, THE MODIFICATIONS SHOULD BE CONSIDERED A "FEATURE SHOWN" PURSUANT TO SECTION 15.2-2232 OF THE CODE OF VIRGINIA, AS AMENDED.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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Commissioner Smyth announced her intent to further defer the decision on S98-CW-2CP, the Out-of-Turn Plan Amendment for the Merrifield area, from May 23, 2001 to May 24, 2001.

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Commissioner Smyth MOVED TO FURTHER DEFER DECISION ON RZ-2000-PR-035, OAK STREET DEVELOPMENT, TO A DATE CERTAIN OF MAY 23, 2001.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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RZ-2000-MA-065 - 6315 BREN MAR ASSOCIATES LP (Decision Only)

(The public hearing on this application was held on May 10, 2001. A complete verbatim transcript of the decision made is included in the date file.)

Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE RZ-2000-MA-065, SUBJECT TO THE PROFFERS DATED MAY 16, 2001.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND THE BOARD OF SUPERVISORS APPROVE A MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENT AND A MODIFICATION OF THE BARRIER REQUIREMENT ALONG THE NORTHERN PROPERTY BOUNDARY IN FAVOR OF THAT SHOWN ON THE GDP AND AS CONDITIONED.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND THE BOARD OF SUPERVISORS APPROVE A WAIVER OF THE TRANSITIONAL SCREENING REQUIREMENT AND A WAIVER OF THE BARRIER REQUIREMENT ALONG THE EASTERN PROPERTY BOUNDARY AS CONDITIONED.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

Commissioner Hall MOVED THAT THE PLANNING COMMISSION RECOMMEND THE BOARD OF SUPERVISORS APPROVE A WAIVER OF THE TRANSITIONAL SCREENING REQUIREMENT AND A WAIVER OF THE BARRIER REQUIREMENT ALONG THE SOUTHERN PROPERTY BOUNDARY IN FAVOR OF THAT SHOWN ON THE GDP AND AS CONDITIONED.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

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Commissioner Koch, citing unresolved issues, MOVED THAT SE-01-Y-007, QUARLES PETROLEUM, INC., BE DEFERRED FOR PUBLIC HEARING UNTIL MAY 30, 2001.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

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Commissioner Koch, to allow more time to review the sign issue, MOVED THAT SE-01-Y-003, FEDERATED DEPARTMENT STORES, INC., BE DEFERRED FOR PUBLIC HEARING UNTIL JUNE 20, 2001.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Alcorn not present for the vote; Commissioner Kelso absent from the meeting.

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SE-00-Y-001 - 6315 BUDGET RENT-A-CAR CORPORATION (Decision Only)

(The public hearing on this application was held on April 25, 2001. A complete verbatim transcript of the decision made is included in the date file.)

Commissioner Koch MOVED THAT THE BUDGET RENT-A-CAR APPLICATION, SE-00-Y-001, BE RECOMMENDED FOR APPROVAL TO THE BOARD OF SUPERVISORS WITH THE PROPOSED DEVELOPMENT CONDITIONS DATED MAY 14, 2001.

Commissioner Byers seconded the motion which carried by a vote of 10-0-1 with Commissioner Alcorn abstaining; Commissioner Kelso absent from the meeting.

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456A-Y93-18-1 - VERIZON WIRELESS, 5830 Old Centreville Road

Commissioner Koch RECOMMENDED THAT WE CONCUR WITH THE DETERMINATION THAT THE MODIFICATIONS PROPOSED BY VERIZON WIRELESS FOR THE TELECOMMUNICATIONS FACILITY LOCATED AT THE CENTREVILLE VOLUNTEER FIRE DEPARTMENT, AT 5830 OLD CENTREVILLE ROAD, ARE IN CONFORMANCE WITH THE RECOMMENDATIONS OF THE COMPREHENSIVE PLAN AND CONSISTENT WITH PRIOR APPROVAL GRANTED BY THE PLANNING COMMISSION UNDER 456-Y93-18 ON JANUARY 13, 1994. THEREFORE, THESE MODIFICATIONS ARE CONSISTENT WITH A "FEATURE SHOWN" PURSUANT TO SECTION 15.2-2232 OF THE CODE OF VIRGINIA.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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Commissioner Harsel announced her intent to defer the public hearing on RZ-2000-BR-061, Bourj Limited, from May 23, 2001 to May 30, 2001.

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Commissioner Harsel announced that there would be a meeting of the Housing Committee on Thursday, June 21, 2001 at 7:30 p.m. She noted that the topic would be the Housing Trust Fund.

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Commissioner Murphy MOVED THAT THE PLANNING COMMISSION CONTINUE THE DEFERRAL OF THE DECISION ONLY ON SE-98-S-024, KNOLLWOOD BAPTIST CHURCH, TO A DATE CERTAIN OF MAY 23, 2001, WITH THE RECORD REMAINING OPEN FOR WRITTEN COMMENTS.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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FS-S01-4 - NEXTEL COMMUNICATIONS, 12111 Braddock Road

Commissioner Murphy MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN FS-S01-4.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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456A-S95-33-1 - VERIZON WIRELESS, 9501 Old Burke Lake Road

Commissioner Murphy MOVED THAT THE PLANNING COMMISSION CONCUR WITH THE "FEATURE SHOWN" DETERMINATION IN 456A-S95-33-1.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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Commissioner Wilson announced that she was organizing a Saturday tour of the Lorton area prior to the August recess to acquaint Commission members with the various development projects in progress. She distributed a preference form and asked that each Commissioner review the proposed dates and return the form to herself or Barbara Lippa, Executive Director, so a definite date could be scheduled.

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Commissioner Palatiello announced his intent to defer the public hearing on 2232-H00-39, Omnipoint/ Voicestream Wireless and Sprint, from May 24, 2001 to an indefinite date in September.

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Commissioner Alcorn reminded the Commission that there would be a meeting of the Environment Committee tomorrow night, Thursday, May 17, 2001 at 7:30 p.m.

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ORDER OF THE AGENDA

Secretary Harsel set the following order for the agenda:

1. CODE AMENDMENTS (Public Street Frontage Requirements)
2. PCA-76-M-112-2 - SEVEN OAKS II HOA

This order was accepted without objection.

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CODE AMENDMENTS (Public Street Frontage Requirements) - To amend Chap. 101 (Subdivision Ord.) which addresses issues related to the public street frontage requirement & minor adjustment of property lines for properties on private streets. The proposed amendments would: (1) add a statement of the current public street frontage requirement from the PFM; (2) allow minor adjustment of property lines to be performed w/out a waiver of the public street frontage requirement subject to the condition that future division of the property by waiver of the public street frontage requirement is precluded; (3) clarify the current requirement that no more than one additional lot can be created by a waiver of the public street frontage requirement; & (4) clarify that a property subject to waiver of the public street frontage requirement is precluded from further division pursuant to another such waiver. PUBLIC HEARING.

Mr. John Freeman, Department of Public Works and Environmental Services, presented the staff report, a copy of which is in the date file. He noted that staff recommended approval of the language outlined on pages 5, 6, and 7 of the staff report.

Chairman Murphy called for speakers from the audience, but received no response. He noted that no rebuttal was necessary. There being no comments or questions from the Commission or closing staff remarks, he closed the public hearing and recognized Commissioner Wilson for action on this case. (Verbatim excerpts are in the date file.)

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Commissioner Wilson MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED AMENDMENTS TO CHAPTER 101, SUBDIVISION ORDINANCE, OF THE CODE OF THE COUNTY OF FAIRFAX AS SET FORTH IN THE STAFF REPORT DATED APRIL 30, 2001.

Commissioners Byers and DuBois seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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PCA-76-M-112-2 - SEVEN OAKS II HOA - Appl. to amend the proffers for RZ-76-M-112 to permit residential development at a density of 8.80 du/ac on property located on the N.W. side of Sleepy Hollow Rd., approx. 150 ft. N. of Aspen La. & S. of Rt. 50 on approx. 3.82 ac. zoned R-12 & HC. Comp. Plan Rec: 5-8 du/ac. Tax Map 51-3((31))(2) B, 5-18. MASON DISTRICT. PUBLIC HEARING.

Mr. Bob Swinehart, President, Seven Oaks II HOA, reaffirmed the affidavit dated May 12, 2001. There were no disclosures by Commission members.

Ms. Tracy Swagler, Zoning Evaluation Division (ZED), Department of Planning and Zoning (DPZ), presented the staff report, a copy of which is in the date file. She noted that staff recommended approval of the application.

Commissioner Hall announced her intention to defer decision on this application until May 24, 2001.

Ms. Swagler responded to questions from Commissioner Byers regarding the proposed changes to Proffer Number 3, especially that section concerning ground level patios.

In response to questions from Commissioner Harsel, Ms. Swagler acknowledged that the landscape plan reproduced in the staff report was difficult to interpret. She added that a larger, colorized version was available.

Mr. Swinehart presented background information, explaining why this application had been submitted. He distributed photographs depicting the before and after conditions of the buffer area behind the brick fence that had been neglected for many years because no one knew the HOA was responsible for maintenance of that area. He added that the HOA had done its best to bring the buffer area up to accepted standards, but cited budget difficulties that forced the homeowners to do a lot of the work themselves rather than hire landscape professionals.

Mr. Swinehart responded to questions from Commissioners Byers, Murphy, and Wilson about the current dilemma. He said that mistakes, oversights, and misunderstandings over the years by the original developer, by County staff, and by previous and current homeowners had contributed to the current situation that had come to light approximately 18 months ago as the result of an investigation started in response to a complaint by an Aspen Lane homeowner.

In response to questions from Commissioner DuBois, Ms. Kristen Abrahamson, Branch Chief, ZED, DPZ, explained that both the height and the location of the brick fence were in dispute at this time.

Mr. Swinehart continued his presentation, further describing the efforts by Seven Oaks homeowners to rectify the situation. (A printed version of Mr. Swinehart's slide show is in the date file.)

Mr. Swinehart responded to questions from Commissioners Byers and Harsel regarding the revised landscaping plan and proposed passive recreation area.

Ms. Swagler responded to questions from Commissioner Hall regarding the unresolved complaints.

In response to questions from Commissioners Wilson and Alcorn, Ms. Abrahamson said staff had researched the issues raised by the complainant, but had been unable to find a conclusive answer as to how intrusions into the buffer area and other violations had passed inspections.

Chairman Murphy called the first listed speaker and recited the rules for public testimony.

Ms. Ellen Schwalenstocker, 6327 Crooked Oak Lane, Falls Church, supported the application. She said she and her husband had not been informed of any building restrictions when they purchased their home and that an unfair burden would be placed on Seven Oaks residents if the original proffers were enforced at this time.

Mr. Tom Rodehau, 6321 Crooked Oak Lane, Falls Church, echoed Ms. Schwalenstocker's remarks about not being advised of building restrictions at the time of purchase and suggested that approval of this application would be a fair and reasonable solution. (A copy of his testimony is in the date file.)

Ms. Pam Follett, 6325 Crooked Oak Lane, Falls Church, explained that the chimney, air conditioning unit, patio and privacy fence on her property were there when she bought her home. She said it would be unreasonable to expect her to remove or relocate these items which were apparently built in violation of the original proffers. She supported approval of the application. (A copy of Ms. Follett's statement and e-mails sent to Commissioner Hall are in the date file.)

In response to questions from Commissioner Byers, Ms. Follett said that the covenants she received with her deed did not mention the patio or privacy fence. She pointed out that her fence and patio were the same as those of her neighbors, using the same slate, the same wood, and obviously built at the same time by the original developer.

Ms. Swagler and Ms. Abrahamson responded to questions from Commissioner Hall regarding the current use of the open space areas both in front of and behind the brick wall.

In response to questions from Commissioner Wilson, Ms. Abrahamson explained that utility easements were permitted in buffer areas.

In response to questions from Chairman Murphy, Ms. Swagler stated that the items referred to in the first section of the new Proffer 3 were already in place; in the second section, some were existing and some proposed; and the third section proposed limits on new additions.

Ms. Martha Girdany, 6357 Crooked Oak Lane, Falls Church, supported the application. She said that removal of existing structures would lower property values and that any new structures would be reviewed by the Seven Oaks Architectural Review Board (ARB).

Ms. Girdany responded to questions from Commissioner Byers regarding the structure of the Seven Oaks ARB.

In response to questions from Commissioner Hall, Ms. Swagler confirmed that the third section of proposed Proffer 3 would allow additions similar to those already in place.

Ms. Norma Jimeno-Canales, 6323 Crooked Oak Lane, Falls Church, supported the application. She said that a bay window on her home apparently extended into the buffer area and she saw no justifiable reason to remove it. She noted that the privacy fences and patios could not be seen from the Aspen Road homes because of the brick wall.

Ms. Nancy Rowland, 3056 Holmes Run Road, Falls Church, representing the Sleepy Hollow Citizens Association, spoke in opposition to the application. She said she understood the need to legitimize the builder's errors by allowing existing chimneys, air conditioning units and the like to extend into the buffer area, but she was opposed to any additional construction. (A copy of her statement is in the date file.)

Mr. Paul Byrtus, 3009 Beechwood Lane, Falls Church, spoke in opposition. He highlighted portions of a letter from Mr. John Olsen, a current resident of West Virginia and one of the original homeowners in Seven Oaks II. Mr. Olsen's letter suggested that the County should maintain the integrity of the existing covenants. (A copy of Mr. Olsen's letter is in the date file.)

Mr. Byrtus responded to questions from Commissioners Byers and Alcorn regarding his own position which he said was that no new construction should be allowed.

Commissioner Palatiello commented that Mr. Olsen didn't seem to be familiar with the difference between covenants and proffers.

Ms. Swagler responded to questions from Commissioner Palatiello regarding how the homeowner's covenants could be revised.

Commissioner Hall said that negotiations had been taking place between the Aspen Lane residents, Seven Oaks residents, County staff and herself. She said there was no clear cut solution and that there were victims on both sides.

Ms. Myriam Lakabi, 3019 Aspen Lane, Falls Church, was opposed to the application. She said that the buffer area should be maintained and that no new construction allowed.

Commissioner Palatiello questioned why so much time had elapsed since the violations occurred before a complaint was raised.

In response to questions from Commissioner Wilson, Ms. Swagler stated that the original proffers, contained in Appendix 4 of the staff report, did not specify the height of the trees to be planted in the buffer area behind the brick wall. Ms. Abrahamson added that the proffers also did not require that the trees conform to the standards in the 1976 Public Facilities Manual, therefore it was impossible to state what size trees should have been planted at that time.

In response to questions from Commissioner Alcorn, Ms. Abrahamson confirmed that the work done recently by Seven Oaks residents to clean up the area behind the brick wall had been done with the concurrence of the County Arborist.

Ms. Elizabeth Ralston, 3023 Aspen Lane, Falls Church, spoke in opposition to the application, especially the proposal to allow new decks on homes that did not currently have decks. She said that the topography of the land was such that the Seven Oaks homes were higher than the Aspen Lane homes and that allowing decks on the second story of Seven Oaks homes created privacy problems for Aspen Lane residents. (A copy of Ms. Ralston's statement is in the date file.)

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(The Commission went into recess at 10:45 p.m. and reconvened in the Board Auditorium at 11:05 p.m. to continue the public hearing.)

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Mr. Henry Strickland, 3035 Holmes Run Road, Falls Church, former member of the Planning Commission, presented historical information regarding the development of Seven Oaks I and II. He explained that a reconfiguration of the lot layout took place in 1986 or 1987 that resulted in five townhomes being closer to the Aspen Road properties than originally intended and the brick wall being placed in the center of the buffer area rather than along the property line. He said that this reconfiguration was approved administratively, with the concurrence of Mr. Tom Davis, Mason District Supervisor at that time, but without benefit of a public hearing. He confirmed Ms. Ralston's comments regarding the topography of the area and said that decks constructed on the Seven Oaks homes towered over the back yards of the Aspen Lane homeowners. He said that that was the main objection, as he saw it, to the approval of the subject application.

In response to questions from Chairman Murphy, Mr. Strickland said that the existing decks were constructed approximately 12 years ago.

In response to questions from Commissioner Alcorn, Mr. Strickland explained that NV Homes, the original developer, had requested the reconfiguration to allow construction of three additional homes. He added that the reconfiguration also resulted in a severe reduction of the land planned for recreational uses.

In response to questions from Commissioner Alcorn, Ms. Swagler confirmed that the original development plan was not proffered, therefore the adjustments requested by the developer were allowed to be approved administratively by the Department of Environmental Management (now named the Department of Public Works and Environmental Services). Ms. Abrahamson confirmed that unproffered development plans were not unusual at that time.

In response to questions from Commissioner Hall, Mr. Strickland said that the homeowners of Sleepy Hollow really had no objection to the placement of the brick wall, but were definitely opposed to any additional decks. Commissioner Hall and Mr. Strickland further discussed the enforcement issue, the existing decks, what could be added legally right now, and what could be added if this application was approved.

In response to questions from Commissioner Alcorn, Mr. Strickland acknowledged that the problems this application was attempting to address would not have occurred if there had been no reconfiguration.

In response to questions from Commissioner Wilson, Ms. Abrahamson said that the building restriction line shown on the site plan was the edge of the 50-foot buffer mentioned in the original proffers.

Ms. Gail Flatness, 3027 Aspen Lane, Falls Church, explained that her neighbor Mr. John Holman, 3001 Aspen Lane, Falls Church, had been unable to attend tonight's meeting and had asked her to present his statement, with which she agreed. Mr. Holman's statement expressed his opposition to the application. He disagreed with staff that supplemental plantings would offset the loss of protection from the original buffer and urged the Commission to enforce the original proffers. (A copy of Ms. Flatness' comments and Mr. Holman's statement is in the date file.)

Mr. James Emlet, 3011 Aspen Lane, Falls Church, spoke in opposition to the application. He said that a plan to increase the vegetation in the area behind the brick wall should be implemented as soon as possible so as to provide an adequate sight and sound barrier for the residents on Aspen Lane. He suggested that the Seven Oaks HOA be required to enlist the services of a landscape company to maintain the area. (A copy of Mr. Emlet's statement is in the date file.)

Mr. Emlet responded to questions from Commissioner Hall regarding his position.

Ms. Arlene Whitten, 3015 Aspen Lane, Falls Church, was opposed to the application. She disagreed with staff that the applicant's current landscaping plan was adequate. She suggested that the broken promises of the past should be rectified and that a maintenance bond should be posted by the applicant to ensure that the neglect shown in the past would not be repeated.

In response to questions from Chairman Murphy about whether her subdivision was developed under the proffer system, Ms. Whitten said she did not know.

Ms. Whitten responded to questions from Commissioner Alcorn regarding the location of the brick wall and from Commissioner Hall regarding the landscaping needed in the buffer area.

Mr. Richard Little, 3011 Aspen Lane, Falls Church, said that the original proffers and agreements should be honored. (A copy of Mr. Little's statement is in the date file.)

In response to questions from Chairman Murphy, Mr. Little said he relied upon his real estate agent who told him the proffers associated with the Seven Oaks development required a 50-foot buffer area.

In response to questions from Commissioner Byers, Mr. Little said there was approximately a six-foot difference between the level of his back yard and the back yards of Seven Oaks II. Commissioner Byers commented then that trees planted in front of the wall would automatically be six feet higher to start with than trees planted behind the wall.

In response to questions from Commissioner Hall, Mr. Little said that, in addition to the landscaping problems, he was also concerned about the possible expansion of current decks.

Mr. William Burrow, 3209 Juniper Lane, Falls Church, representing the Ravenwood Civic Association, spoke in opposition to the application. He said that the original proffers should be honored. Mr. Burrow submitted a letter from Mr. Tom Davis. (Copies of Mr. Burrow's remarks and Mr. Davis' letter are in the date file.)

In response to questions from Commissioner Alcorn, Mr. Burrow acknowledged that there had not been a proffered condition amendment (PCA) application processed at the time the subject property was reconfigured, but noted that Mr. Davis' letter stated the 50-foot buffer was ". . . a promise and a legal commitment made by the entire Board of Supervisors . . ." Ms. Abrahamson pointed out that the Board did review the site plan.

In response to questions from Commissioner Hall, Ms. Abrahamson clarified that, while the site plan was administratively reviewed by the Board, no changes were made to the proffers.

Mr. James Flatness, 3027 Aspen Lane, Falls Church, was opposed to the application. He said that the originally approved proffers should remain in force and that changing them now would have an adverse effect on the validity and integrity of the proffer system. (A copy of his statement is in the date file.)

Commissioner Hall agreed that the proffer system was an important part of the land use process, but explained that the current circumstance was not a "pick and choose" situation wherein citizens could choose which proffers they wanted enforced and which they did not want enforced. She added that a strict interpretation of the original proffers would create an undue hardship on the current residents of Seven Oaks, and therefore was not an option at this point.

In response to questions from Commissioner Alcorn, Mr. Flatness said he would not be in favor of fining Ms. Jimeno-Canales or forcing her to remove her bay window, but that he objected to any new construction.

Mr. William Bailey, 3802 Kendale Road, Annandale, representing the Federation of Citizens Associations, emphasized the importance of honoring proffers and noted that the Federation,

while avoiding site-specific determinations, advocated the general principle that proffers should be enforced. (A copy of Mr. Bailey's remarks is in the date file.)

In response to questions from Chairman Murphy, Mr. Bailey said he could not speak for the Federation, but he personally would not support relocation of the brick wall, removal of a bay window and air conditioning units, or dismantling of existing decks, patios, and privacy fences, all of which would be required by a strict interpretation of the proffers. He added that the Commission had to decide if circumstances had changed to the extent that a PCA was warranted.

In response to questions from Commissioner Alcorn, Mr. Bailey said that the Federation was not involved in the reconfiguration, reiterating that the Federation did not make site-specific recommendations. Commissioner Alcorn commented that the dilemma facing the Commission tonight seemed to have stemmed from the fact that a public hearing was not held when the reconfiguration was carried out.

Commissioner Hall reiterated her view that the proffer system was an important part of the land use process, and expressed her disappointment that the original proffers were violated from the beginning.

Ms. Mary Northup, 6429 Ichabod Place, Falls Church, said that the applicant's justification for the application was not supportable. She said that the Seven Oaks residents were attempting to gain land use rights that were not theirs when they purchased their properties by taking advantage of the County's understandable reluctance to tear down a brick wall or chimney. (A copy of Ms. Northup's remarks is in the date file.)

Ms. Anne Pendleton, 3028 Knoll Drive, Falls Church, opposed the application. She said the burden of "due diligence" was on the Seven Oaks residents who should have investigated the restrictions applicable to their properties before purchasing them. She added that their failure to do so was unfortunate, but that ignorance of the restrictions was not an acceptable excuse for asking for proffer changes now. She suggested a compromise that would allow existing violating structures to remain, but would prevent any further encroachments into the buffer area. (A copy of Ms. Pendleton's letter is in the date file.)

In response to questions from Commissioner Wilson, Ms. Abrahamson said there was not now and, to her knowledge, never had been a definition of "buffer strip" in the Zoning Ordinance. She added that "transitional screening yard" was defined. She acknowledged that, while the original proffer did not specifically state that no building could occur in the buffer area, various interpretations by the Zoning Administrator on this point had held that no construction was allowed.

Mr. Stephen Welch, 3160 Holmes Run Road, Falls Church, submitted and quoted from a letter from Robert Hull, 38th District State Delegate, in which Delegate Hull did not take a position on

the subject application and pointed out that he was not offering legal advice, but did explain his interpretation of the *Code of Virginia* as it pertained to land use matters. (A copy of Delegate Hull's letter is in the date file.)

Ms. Christine Trapnell, former Fairfax County Supervisor, Mason District, 3416 Mansfield Road, Falls Church, explained that she had been employed by then Supervisor Tom Davis when the reconfiguration took place. She concurred that the agreement at that time was that a 50-foot "no build" zone be established to protect the adjacent residents. She said that an attempt to amend an agreement that was essential to the development itself set a troublesome precedent. She added that the proffer system was a bond between the developer and the community, blessed by the County, and the basis of a successful development process. She urged the Commission to honor the commitments made and expressed her hope that an agreement could be reached among all parties involved.

Mr. William Cross, 6313 Buffalo Ridge Road, Falls Church, representing the Buffalo Ridge Citizens Association, spoke in opposition. He commented on the importance of honoring proffers, but acknowledged that an unfortunate situation had developed. He encouraged the Commission to develop a solution that met the intent of the original proffers as closely as possible. (A copy of a letter from Mr. Cross is in the date file.)

Mr. John Zahrt, 3116 Holmes Run Road, Falls Church, explained that Mr. Reggie Massie, President of the Ravenwood Park Citizens Association, had been present earlier, but had to leave and therefore asked Mr. Zahrt to present his testimony. Mr. Zahrt read Mr. Massie's letter which expressed his opposition to the application, stressing the importance of honoring the original proffers that were negotiated in good faith. (A copy of Mr. Massie's letter is in the date file.)

There being no further speakers, Chairman Murphy called upon Mr. Swinehart for a rebuttal statement.

Mr. Swinehart thanked the Planning Commission, especially Commissioner Hall, who had worked with both Aspen Lane and Seven Oaks residents in attempting to resolve the outstanding issues. He also thanked staff for their assistance. He expressed the intentions of Seven Oaks residents to continue seeking an equitable and agreeable solution. As a result of tonight's testimony, he assured the Commission that future disclosure documents would include a copy of both the proffers and the covenants. He noted that there was still some disagreement about what was and was not allowed in the buffer area and that the suggestion to plant trees in front of the brick wall was not a viable option. He explained that the grading in that area was intended to direct stormwater into catch basins and that the clay soil was unsuitable for planting.

Mr. Swinehart responded to questions from Commissioner Byers regarding what constituted construction in the buffer area.

In response to questions from Commissioner Byers, Mr. Swinehart explained that the engineer involved in grading the site had advised him that shrubs would not do any harm, but that major plantings in front of the fence would destroy the grading and impede the water flow.

Commissioner Hall commented on tonight's informative testimony and expressed her hope that the outstanding issues could still be worked out and a satisfactory compromise reached.

Commissioner Alcorn commented that everyone agreed about the importance of the proffer system. He added that the problems in this case began when a site plan was approved that was contrary to at least two of the proffers accepted at the time of the original rezoning. He said that tonight's public hearing was an example of how the system was supposed to work, with opinions and recommendations being presented by all interested parties. Commissioner Alcorn expressed his confidence in Commissioner Hall's ability to facilitate a solution.

Chairman Murphy complimented Mr. Swinehart for accepting the responsibility of working on this case. He also thanked tonight's speakers for their decorum and enlightening testimony.

There being no further comments or questions from the Commission and neither Ms. Swagler nor Ms. Abrahamson having any closing staff remarks, Chairman Murphy closed the public hearing and recognized Commissioner Hall for a deferral motion. (Verbatim excerpts are in the date file.)

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Commissioner Hall MOVED THAT WE DEFER THE DECISION ON PCA-76-M-112-2, SEVEN OAKS II HOA, TO A DATE CERTAIN OF MAY 24, 2001, WITH THE RECORD TO REMAIN OPEN FOR WRITTEN COMMENTS.

Commissioner Byers seconded the motion which carried unanimously with Commissioner Kelso absent from the meeting.

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The meeting was adjourned at 1:00 a.m.
Peter F. Murphy, Jr., Chairman
Suzanne F. Harsel, Secretary

For a verbatim record of this meeting, reference may be made to the audio and video recordings which may be found in the Office of the Planning Commission of Fairfax County, Virginia.

Minutes by: Gloria L. Watkins
Approved on: July 25, 2002

Mary A. Pascoe, Clerk to the
Fairfax County Planning Commission